

1 DARLENE RICKER  
2 State Bar # 151653  
3 P.O. Box 2285  
4 Malibu, California 90265  
5 Telephone: (310) 457-8600  
6 Facsimile: (310) 457-8602  
Email: dmrickr@aol.com

Standby counsel for defendant  
MICHAEL PATRICK McELHINEY

lodged and  
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FILED

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

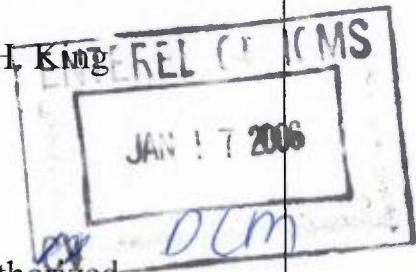
UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
MICHAEL PATRICK McELHINEY,  
Defendant.

Case No. CR-02-938-GHK

**REQUEST FOR INCREASE  
TO CAPITAL RATE BY  
STANDBY COUNSEL FOR  
DEATH-AUTHORIZED  
DEFENDANT MICHAEL  
McELHINEY; DECLARATION  
OF DARLENE RICKER**

**[PROPOSED] ORDER  
LODGED**

Judge: Hon. George H. King  
Time/Date: N/A



Darlene M. Ricker, appointed standby counsel for death-authorized defendant Michael Patrick McElhiney, hereby requests that she be compensated at the CJA capital counsel rate for work performed on the instant case on or after October 4, 2005, the date on which Mr. McElhiney received death authorization from the Government.

**REQUEST FOR INCREASE TO CAPITAL RATE; DARLENE RICKER DECLARATION**

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This request is based upon memoranda from the Administrative Office of the United States Courts, which announced a maximum \$160 hourly capital compensation rate for work performed on or after February 1, 2005, and a maximum rate of \$163 per hour for work performed on or after January 1, 2006, and upon the attached Declaration of Counsel [Darlene M. Ricker].

Respectfully submitted,

DATED: January 10, 2006

DARLENE RICKER  
Standby counsel for defendant  
**MICHAEL PATRICK McELHINEY**

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**REQUEST FOR INCREASE TO CAPITAL RATE; DARLENE RICKER DECLARATION**

**DECLARATION OF COUNSEL**  
**[DARLENE RICKER]**

I, DARLENE RICKER, state and declare as follows:

1. I am an attorney licensed to practice law in the state of California and before the bar of this Court. All of the facts stated herein are true of my personal knowledge or upon belief and information and if called upon to testify thereto, I could and would do so competently.
  2. This declaration is made in support of the attached Request for Increase to Capital Compensation Rate in the instant case.
  3. From the outset of the instant case, this has been designated as a federal capital prosecution and Michael Patrick McElhiney has been designated as a death-eligible defendant.
  4. On April 15, 2003, the Court appointed me at the standard CJA attorney rate of \$90 per hour to represent Mr. McElhiney as guilt-phase standby counsel, effective *nunc pro tunc* to April 3, 2003.
  5. The Court has previously indicated that it would consider requests for an increase to capital rates by guilt-phase counsel in the instant

case after death authorization was obtained by the Government. (For example, the docket reflects that on July 11, 2005, the Court ordered that both guilt and penalty phase counsel for co-defendant Robert Griffin in the instant case were to be compensated at the \$160 hourly capital rate because Mr. Griffin had been death-authorized.)

6. On October 4, 2005, the Government filed its Notice of Intent to Seek the Death Penalty against Mr. McElhiney.
7. Because Mr. McElhiney has been death-authorized, I respectfully request that the Court order that I be compensated at the capital rate, effective *nunc pro tunc* to October 4, 2005.
8. On January 28, 2005, the Administrative Office of the United States Courts issued a memorandum stating that effective February 1, 2005, the maximum CJA capital counsel rate would be increased from \$125 to \$160 per hour.
9. On January 4, 2006, the Office of the CJA Supervising Attorney for the Central District issued a memorandum stating that pursuant to Public Law 109-115, effective January 1, 2006, the maximum CJA capital counsel rate would be increased from \$160 to \$163 per hour.

- 1       10. I believe that my 10 years of experience on federal capital matters  
2                  qualifies me for the maximum hourly rate, based on the following:  
3  
4                  (a) In the mid-1990s, I assisted lead counsel on several federal  
5                          capital habeas matters in the Central District (*Kelvin Malone v.*  
6                          *Calderon*, # CV-96-4040-WJR; *Earl Jones v. Calderon*, # CV-94-  
7  
8                          816-WMB). I drafted major portions of those federal petitions;  
9  
10                 (b) I have been a member of the federal Capital Habeas Attorney  
11                          Panel in this district since the inception of that panel in 1998;  
12  
13                 (c) I was a member of the federal Capital Habeas Attorney Panel in  
14                          the Northern District of California and was appointed as counsel  
15                          for capital petitioner David Esco Welch (*Welch v. Woodford*,  
16                          # CV-00-20242-RMW) at the maximum CJA capital rate;  
17  
18                 (d) For the past seven years, I have been lead counsel in the federal  
19                          capital habeas matter of *Bradford v. Woodford*, # CV-98-6453-  
20                          RSWL. On March 10, 1999, I was appointed as counsel for  
21                          capital petitioner Bill Bradford at the maximum CJA capital rate;  
22  
23                 (e) I am currently CJA counsel in the pending federal capital habeas  
24                          matter of *Mendoza v. Stokes*, CV-03-6194-SJO (Cent. Dist.  
25  
26                          - 5 -  
27  
28                          REQUEST FOR INCREASE TO CAPITAL RATE; DARLENE RICKER DECLARATION

1                   Calif.). I was appointed at the maximum CJA capital rate; and  
2                   (f) I have handled federal death-eligible prosecutions in this district,  
3                   including *United States v. Figueroa et al*, # ED-CR-01-88-RT, in  
4                   which I was appointed as learned capital counsel and was  
5                   compensated at the maximum capital rate.  
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8         11. In addition to my federal capital experience, I have handled several  
9                   state-level capital matters, both at the trial and appellate levels,  
10                  including:

11                 (a) I hold a dual appointment as appellate and habeas counsel for  
12                   Randall Clark Wall, whose capital case is pending before the  
13                   Supreme Court of California (# S044693). I have represented  
14                   Mr. Wall for the past 5 years and was appointed in October  
15                   2000. I also represented Mr. Bradford, the federal capital  
16                   petitioner referenced in para. 10 (d), in his state exhaustion  
17                   proceedings before the California Supreme Court; and  
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20                 (b) In 1998, I was retained to assist lead counsel with a high-  
21                   profile capital murder trial that lasted three months in Los  
22                   Angeles Superior Court (*People v. John Orr*) (Glendale Fire  
23  
24

1 Department arson investigator capitally charged with four  
2 arson-murders). I worked extensively on guilt- and penalty-  
3 phase issues.  
4

5 12. Based on the foregoing, I respectfully request that the Court order  
6 *nunc pro tunc* that I may be compensated at the CJA capital rate of \$160 per hour,  
7 effective October 4, 2005 (the date on which Mr. McElhiney was death-  
8 authorized), and at \$163 per hour effective January 1, 2006 (in accordance with  
9 the most recent increase in the CJA capital counsel rate).

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13 Executed this 10th day of January, 2006, under penalty of perjury of the laws  
14  
15 of the United States of America, at Malibu, California.

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18 DARLENE M. RICKER  
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## **PROOF OF SERVICE**

I, Darlene Ricker, declare that: I am employed in Los Angeles County, California; my business address is P.O. Box 2285, Malibu, California 90265; I am over the age of eighteen years; I am not a party to the above-entitled action; I am a member of the Bar of the United States District Court for the Central District of California, and that I served a copy of the attached "**REQUEST FOR INCREASE TO CAPITAL RATE BY STANDBY COUNSEL FOR DEFENDANT MICHAEL McELHINEY; DARLENE RICKER DECLARATION**" on the following individual(s), addressed as follows, by placing same in a sealed envelope for collection and mailing via the United States Post Office at Malibu, California, with sufficient first-class postage attached, on January 9, 2006:

**SEE ATTACHED SERVICE LIST**

This proof of service is executed at Malibu, California, on January 9, 2006.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

DARLENE M. RICKER

**REQUEST FOR INCREASE TO CAPITAL RATE; DARLENE RICKER DECLARATION**

1 ATTACHMENT

2 UNITED STATES v. BARRY BYRON MILLS, et al.  
3 No. CR 02-938-GHK

4 AUSA Steve Wolfe  
5 1200 U.S. Courthouse  
6 312 N. Spring Street  
7 Los Angeles, CA 90012

8 Larry Bakman (Richard Terflinger)  
9 10100 Santa Monica Blvd., Suite 800  
10 Los Angeles, CA 90067

11 Michael R. Belter (Ronald Boyd Slocum capital counsel)  
12 65 North Raymond, Suite 320  
13 Pasadena, California 91103

14 Terrence Bennett (John Stinson capital counsel)  
15 P.O. Box 709  
16 Pasadena, CA 91102-0709

17 James Bisnow (Michael McElhiney Advisory Learned Capital Counsel)  
18 880 West First Street, Suite 304  
19 Los Angeles, CA 90012

20 Reuben Cahn (Elliott Grizzle)  
21 225 Broadway, Suite 900  
22 San Diego, CA 92101

23 Christopher Chaney (Gary Littrell capital counsel)  
24 1055 East Colorado Boulevard, Suite 310  
25 Pasadena, CA 91106

26 Benjamin Coleman (Elliott Grizzle capital counsel)  
27 433 G Street, Suite 202  
28 San Diego, CA 92101

29 John Cotsirilos (David Chance capital counsel)  
30 2442 4<sup>th</sup> Avenue  
31 San Diego, CA 92101

32 Michael M. Crain (Robert Griffin capital counsel)  
33 P.O. Box 3730  
34 Santa Monica, CA 90408

35 Mark H. Donatelli (Henry Michael Houston)  
36 1215 Paseo De Peralta  
37 P.O. Box 8180  
38 Santa Fe, New Mexico 87504-8180

39 David R. Evans (Wayne Bridgewater)  
40 202 South Lake Avenue, Suite 230  
41 Pasadena, CA 91101

1 Amy E. Jacks (Steve Scott)  
2 1717 4th Street, Suite 300  
Santa Monica, CA 90401  
3  
4 Knut Johnson (David Chance)  
1010 Second Avenue, Suite 1850  
San Diego, CA 92101  
5  
6 Kenly Kiya Kato (Ronald Boyd Slocum)  
468 N. Camden Drive, Suite 200  
Beverly Hills, CA 90210  
7  
8 Jay Lichtman (Edward Burnett)  
3550 Wilshire Boulevard, Suite 2000  
Los Angeles, CA 90010  
9  
10 Edward M. Medvane (Gary Littrell)  
Lightfoot, Vandevelde, Sadowsky Medvane & Levine  
655 South Hope Street, Thirteenth Floor  
11 Los Angeles, CA 90017-3211  
12 Michael Patrick McElhiney  
Reg. No. 04198-097 (8-N)  
13 Metropolitan Detention Center  
P.O. Box 1500  
14 Los Angeles, CA 90053  
15 Ezekiel P. Perlo (Jason Lee Schwyhart)  
16133 Ventura Blvd., Suite 1270  
16 Encino, CA 91436  
17 Paul Potter (John Stinson)  
Potter, Cohen & Samulon  
18 3852 East Colorado Blvd.  
Pasadena, CA 91107  
19  
20 Michael J. Proctor (Henry Michael Houston)  
1000 Wilshire Blvd., Suite 600  
Los Angeles, CA 90017  
21 Dale Michael Rubin (Richard Terflinger capital counsel)  
22 2275 Huntington Drive, Suite 902  
San Marino, CA 91108  
23 Daniel R. Schattnik (Carl Edgar Knorr, Jr.)  
24 55 South 9th Street  
East Alton, Illinois 62024  
25 Richard H. Sindel (Carl Edgar Knorr, Jr. capital counsel)  
26 8000 Carondelet, Suite 301  
Clayton, MO 63105  
27  
28

1 Richard M. Steingard, Esq. (Wayne Bridgewater)  
2 800 Wilshire Blvd., Suite 1510  
3 Los Angeles, CA 90017  
Joseph F. Walsh (Robert Griffin)  
316 West Second Street, Suite 1200  
Los Angeles, CA 90012

4 Gerard J. Wasson (Jason Lee Schwyhart CJA counsel)  
5 2664 Fourth Avenue  
San Diego, CA 92103

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